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Attorneys for Plaintiffs

## UNITED STATES DISTRICT COURT

## CENTRAL DISTRICT OF CALIFORNIA

ABS ENTERTAINMENT, INC., an  
Arkansas corporation, BARNABY  
RECORDS, INC., a California corporation,  
BRUNSWICK RECORD CORPORATION,  
a New York corporation and MALACO,  
INC., a Mississippi corporation, each  
individually and on behalf of all others  
similarly situated.

Plaintiffs,

v.

CBS CORPORATION, a Delaware  
corporation; CBS RADIO INC., a Delaware  
corporation; and DOES 1 through 10,

Defendants.

Case No. 2:15-cv-6257-PA (AGRx)

**PLAINTIFFS' EVIDENTIARY  
OBJECTIONS TO CBS'S  
DECLARATIONS OF SETH  
NEIMAN AND JEFF  
SOTTOLANO SUBMITTED IN  
SUPPORT OF CBS'S MOTION  
FOR SUMMARY JUDGMENT  
OR, IN THE ALTERNATIVE,  
PARTIAL SUMMARY  
JUDGMENT**

Date: May 2, 2016  
Time: 1:30 p.m.  
Place: Courtroom 15 – Spring St.  
Before: Hon. Percy Anderson

1 Plaintiffs object to the following evidence cited in support of CBS's Motion for  
2 Summary Judgment, or, in the Alternative, for Partial Summary Judgment.

3 **Objection No. 1**

4 **Evidence Objected to:**

5 13. The CD liner notes confirm that the sound recordings CBS played  
6 were re-issued, re-mastered, and/or re-mixed digital recordings, and were not  
7 the original analog recordings that were released on vinyl records. In many  
8 cases the liner notes show that a separate copyright registration is being  
9 claimed for the new sound recording, well after 1972.

10 Declaration of Seth Neiman, ¶ 13.

11 **Grounds for Objection:** Irrelevant due to lack of foundation (Fed. R. Evid. 401,  
12 402); Probative value is substantially outweighed by prejudice to Plaintiffs, confusing  
13 the issues, and misleading the jury (Fed. R. Evid. 403); Impermissible opinion (Fed.R.  
14 Evid. 701).

15 The declaration itself provides no foundation as to how Mr. Neiman would have  
16 known whether a copyright was or was not claimed on a "new sound recording" after  
17 1972 nor is there is any discussion of what steps Mr. Neiman took to make this  
18 determination. Further, at his deposition, Mr. Neiman admitted that he, in fact, had no  
19 knowledge as to whether "sound recording copyrights" were claimed in any of the  
20 remastered copies of the works. (Neiman Dep., at 144:13-146:3; 158:5-160:16; Ex. 4  
21 to Block Decl.) Mr. Neiman conceded that he is unfamiliar with copyright notices in  
22 general and conceded that he never reviewed the actual copyright registrations for the  
23 CD liner notes at issue before signing his declaration. (*Id.*) Mr. Neiman could not  
24 explain why he testified under penalty of perjury that "sound recording copyrights"  
25 existed in the remastered works when he admitted that he had no information on  
26 which to base that sworn testimony. (Neiman Dep., at 153:3-158:4; Ex. 4 to Block  
27 Decl.)  
28

**Objection No. 2****Evidence Objected to:**

All statements by Mr. Neiman in Paragraphs 14-38, 40-47, 50-69, and 71-72 of his Declaration to the effect that any entity had claimed, after 1972, a “sound recording copyright” in any recording.

**Grounds for Objection:** Irrelevant due to lack of foundation (Fed. R. Evid. 401, 402); Probative value is substantially outweighed by prejudice to Plaintiffs, confusing the issues, and misleading the jury (Fed. R. Evid. 403); Impermissible opinion (Fed.R. Evid. 701).

The declaration itself provides no foundation as to how Mr. Neiman would have known whether a copyright was or was not claimed on a “new sound recording” after 1972 nor is there is any discussion of what steps Mr. Neiman took to make this determination. Further, at his deposition, Mr. Neiman admitted that he, in fact, had no knowledge as to whether “sound recording copyrights” were claimed in any of the remastered copies of the works. (Neiman Dep., at 144:13-146:3; 158:5-160:16; Ex. 4 to Block Decl.) Mr. Neiman conceded that he is unfamiliar with copyright notices in general and conceded that he never reviewed the actual copyright registrations for the CD liner notes at issue before signing his declaration. (*Id.*) Mr. Neiman could not explain why he testified under penalty of perjury that “sound recording copyrights” existed in the remastered works when he admitted that he had no information on which to base that sworn testimony. (Neiman Dep., at 153:3-158:4; Ex. 4 to Block Decl.)

**Objection No. 3****Evidence Objected to:**

10. The CD liner notes (attached as exhibits, as discussed below) confirm that the sound recordings that CBS may have played were re-issued, re-mastered, and/or re-mixed digital recordings, and were not the original analog recordings that appeared on vinyl. In many cases the liner notes show that a

1 separate copyright registration is being claimed for the new sound recording,  
2 well after 1972.

3 Declaration of Jeff Sottolano, ¶ 10.

4 **Grounds for Objection:** Irrelevant due to lack of foundation (Fed. R. Evid. 401,  
5 402); Probative value is substantially outweighed by prejudice to Plaintiffs, confusing  
6 the issues, and misleading the jury (Fed. R. Evid. 403); Impermissible opinion (Fed.R.  
7 Evid. 701).

8 The declaration itself provides no foundation as to how Mr. Sottolano would  
9 have known whether a copyright was or was not claimed on a “new sound recording”  
10 after 1972 nor is there is any discussion of what steps Mr. Sottolano took to make this  
11 determination. Further, at his deposition, Mr. Sottolano admitted that he, in fact, had  
12 no knowledge as to whether “sound recording copyrights” were claimed in any of the  
13 remastered copies of the works. (Sottolano Dep., 99:20-111:2; Ex. 5 to Block Decl.)  
14 Mr. Sottolano conceded that he is unfamiliar with copyright notices in general and  
15 conceded that he never reviewed the actual copyright registrations for the CD liner  
16 notes at issue before signing his declaration. (*Id.*) Mr. Sottolano could not explain  
17 why he testified under penalty of perjury that “sound recording copyrights” existed in  
18 the remastered works when he admitted that he had no information on which to base  
19 that sworn testimony. (Sottolano Dep., 100:3-109:8; Ex. 5 to Block Decl.)

20 **Objection No. 4**

21 **Evidence Objected to:**

22 All statements by Mr. Sottolano in Paragraphs 11-24 and 26-32 of his  
23 Declaration to the effect that any entity had claimed, after 1972, a “sound recording  
24 copyright” in any recording.

25 **Grounds for Objection:** Irrelevant due to lack of foundation (Fed. R. Evid. 401,  
26 402); Probative value is substantially outweighed by prejudice to Plaintiffs, confusing  
27 the issues, and misleading the jury (Fed. R. Evid. 403); Impermissible opinion (Fed.R.  
28 Evid. 701).

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The declaration itself provides no foundation as to how Mr. Sottolano would have known whether a copyright was or was not claimed on a “new sound recording” after 1972 nor is there is any discussion of what steps Mr. Sottolano took to make this determination. Further, at his deposition, Mr. Sottolano admitted that he, in fact, had no knowledge as to whether “sound recording copyrights” were claimed in any of the remastered copies of the works. (Sottolano Dep., 99:20-111:2; Ex. 5 to Block Decl.) Mr. Neiman conceded that he is unfamiliar with copyright notices in general and conceded that he never reviewed the actual copyright registrations for the CD liner notes at issue before signing his declaration. (*Id.*) Mr. Neiman could not explain why he testified under penalty of perjury that “sound recording copyrights” existed in the remastered works when he admitted that he had no information on which to base that sworn testimony. (Sottolano Dep., 100:3-109:8; Ex. 5 to Block Decl.)

DATED: April 4, 2016

Respectfully submitted,

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15 RECORDS, INC., BRUNSWICK RECORD  
16 CORPORATION and MALACO, INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on April 4, 2016 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system. Any other counsel of record will be served by electronic mail, facsimile, U.S. Mail and/or overnight delivery.

/s/ Yoshie Botta

Yoshie Botta

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